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In the Supreme Court of the United States

No. 353.

OCTOBER TERM, 1962.

TERESA GRISANTI,
Plaintiff-Appellant,

vs.

THE CITY OF CLEVELAND, *et al.*,
Defendants-Appellees.

MOTION TO DISMISS APPEAL.

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THE CITY OF CLEVELAND, *et al.*,
Defendants-Appellees.

MOTION TO DISMISS APPEAL.

Pursuant to Rule 16 of this Court, Appellees move to dismiss this appeal on the grounds that two questions of which Appellant seeks review were not raised or passed upon by the state courts and that none of the questions presents a substantial federal question.

OPINIONS BELOW.

The December 8, 1961 opinion of the Court of Common Pleas of Cuyahoga County (set forth as Appellant's Appendix A) is reported in 18 Ohio Op. 2d 143 and 179 N. E. 2d 798. The opinion of the Court of Appeals of Cuyahoga County (set forth as Appellant's Appendix C) is reported in 89 Ohio L. Abs. 1 and 181 N. E. 2d 299. The May 9, 1962 order of the Supreme Court of Ohio dismissing Appellant's appeal for the reason that no debatable constitutional question was involved is reported at 173 O. S. 386 and 182 N. E. 2d 568, and is set forth, with the journal entry denying rehearing on June 13, 1962, as Appellant's Appendix E.

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED.

The only federal constitutional provision involved is the "due process" portion of the Fourteenth Amendment set forth by Appellant. Appellant does not here elucidate the applicability of the Fourth Amendment, as she did not in the state courts, and so assumedly it is not involved. As is later pointed out, neither the Fifth Amendment nor the Ordinance of 1787 quoted by Appellant are involved.

Also involved are:

a. Sections 1.5102-1.5108 of the Codified Ordinances of Cleveland (the "statute" governing the urban renewal activities of this home-rule city), set forth in full herein as Appendix A. Section 1.5102, so often referred to in the discussion that follows, is here set forth:

> "An area shall be determined to be a blighted or deteriorated area if (1) a preponderance of the structures therein is detrimental to the public health, safety or welfare by reason of age, dilapidation, over-crowding, faulty arrangement, lack of ventilation or sanitary facilities, or any combination of these factors, and which is detrimental to the public health, safety or welfare because a preponderance of structures within said area fails to conform in one or more respects to the provisions of the Codified Ordinances of the City of Cleveland relating to building, housing and sanitation; or (2) there is a predominance of defective or inadequate street layout, or faulty lot layout in relation to size, adequacy, accessibility or usefulness, or unsanitary or unsafe conditions, or deterioration of site improvements, or conditions which endanger life or property by fire or other causes."

b. Ordinance No. 2428-60, adopted by Cleveland City Council on December 12, 1960, finding the area involved to be blighted, deteriorated and deteriorating and adopting the Erieview Plan. This is set forth as Appellant's Appendix F.

c. Section 1 of Ordinance No. 449-61, adopted by Cleveland City Council February 20, 1961, in which certain findings of facts concerning the area here involved are made:

> "That this Council accepts the facts contained in the report of the Director of Urban Renewal and Housing, File No. 415-61, and it is further found and determined that the Erieview I Project (Ohio R-36) area is not only a blighted, deteriorated, and deteriorating area but is also a slum area detrimental to and a menace to the public safety, health, morals, and general welfare most particularly of the thousands of people who live in, work in, own property in, and otherwise use the project area and immediate vicinity, as well as the people of the City of Cleveland because an overwhelming preponderance of the structures in the project area is detrimental to the public health, safety, and welfare by reason of age, dilapidation, overcrowding, faulty arrangement, lack of ventilation or sanitary facilities, mixture of incompatible land uses as is evidenced by the failure of said structures to conform to the provisions of the Codified Ordinances of the City of Cleveland relating to building, housing and sanitation, unsafe conditions, deterioration of site improvements and other conditions which endanger life and property by fire or other causes, all of which conditions cannot be eliminated except by a complete clearance and redevelopment of the area in accordance with the plan therefor approved by this Council by Ordinance No. 2428-60 on December 12, 1960."

The acquisition of Appellant's property is permitted, as found by the Ohio courts, by the portion of Art. I, § 19 of the Ohio Constitution that reads:

> "Private property shall ever be held inviolate, but subservient to the public welfare * * * and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner."

THE QUESTIONS PRESENTED FOR REVIEW.

There is no question here involved of just compensation. The sole questions are:

1. In a landowner's action to enjoin the appropriation of his property, does a trial court's exclusion of evidence proffered in an attempt to contradict the facts found by the city's legislative body upon which it based its determination of the necessity of acquiring the landowner's property, violate any rights of the landowner under the Fourteenth Amendment's due process clause?

2. Is the elimination of a blighted and deteriorated area, as defined in Section 1.5102 of the Cleveland Codified Ordinances (quoted above at page 2), and planned redevelopment of that area so to prevent the recurrence of those conditions, a public purpose?

3. Does due process require that a landowner be afforded notice and an opportunity to be heard on the question of the necessity of the acquisition of his property before the legislative body by ordinance determines such necessity?

STATEMENT OF THE CASE.

Appellant questions the procedure and the substance of the Erieview I Urban Renewal Project in the City of Cleveland, one of the many now familiar urban renewal projects throughout the nation financed and administered jointly by the federal and local governments. She originally presented her objections in the Ohio courts by way of an action to enjoin the acquisition of her property and that of others in the Erieview area. She asserted standing as a taxpayer of the City and as the owner of property the City seeks to acquire for the public purpose of eliminating blighted conditions in an area determined by the legislative body of the City of Cleveland to be slum, blighted, deteriorated and deteriorating.

A. The Urban Renewal Ordinance Involved.

Under the rather unique provisions of the Ohio Constitution, municipalities are granted directly by Art. XVIII, § 3 "all powers of local self-government." A municipality which has adopted a charter, as has the City of Cleveland, is empowered by Art. XVIII, § 7 of the Constitution to determine the procedure for the exercise of the powers of local self-government. Under Section 24 of the Cleveland City Charter the legislative powers of the city are vested in the elected City Council. Thus in matters of local self-government the Cleveland City Council is the legislative body of Ohio. The Supreme Court of Ohio has held that elimination of conditions of blight and deterioration, as here involved, is a matter of local self-government. *State ex rel. Bruestle v. Rich*, 159 Ohio St. 13, 110 N. E. 2d 778 (1953).

Acting under the power granted directly to it by the state constitution via the charter, the Cleveland City

Council enacted on October 17, 1955 the basic urban renewal procedural ordinance, which is presently §§ 1.5102 to 1.5108 of the Codified Ordinances of Cleveland; that complete Ordinance was Joint Exhibit A in the trial court, and is set forth in full herein as Appendix A. In general, it provides for the elimination of slum and blight conditions on an area-wide basis, with planned redevelopment of an area so to prevent the recurrence of those conditions. An area shall be found to be blighted or deteriorated if conditions specified in § 1.5102, quoted above at page 2, are found to exist. When the City Planning Commission determines the existence of a blighted or deteriorated area, it is empowered by § 1.5104 to adopt, after at least one public hearing, a plan for the renewal of the area; that section requires that notice of the public hearing must be given by p. blication at least fourteen days, and mailed notice to owners of property in the proposed redevelopment area at least ten days, before the hearing. Before the plan adopted by the Planning Commission becomes effective it must, under § 1.5105, be approved by the City Council. Council's approval must include a finding and determination by it "that the area is a blighted, deteriorated or deteriorating area," that the plan conforms with the "workable program for the elimination and prevention of slums and blight" and affords the "maximum opportunity consistent with the sound needs of the city as a whole for the * * * redevelopment of the Urban Renewal Area by private enterprise."

B. The Proceedings Taken Under the Ordinance.

Based on the reports of city agents and officials, as well as of special consultants, as to building and area conditions in the Erieview area, the City Planning Commission determined the area to be blighted and deteriorated and set a public hearing for November 22, 1960 on the adoption of the renewal plan. Notice of the hearing was published in a Cleveland newspaper of general circulation on November 8 and 15 and in the official City newspaper on November 9 and 16; in addition, the Appellant as a property owner in the area received the required 10-day mailed notice of the hearing (Appellant's Jurisdictional Statement, page 9). Following the November 22 public hearing at which the Appellant was represented, the Planning Commission, in a November 25 resolution, found that the Erieview area was blighted, deteriorated and deteriorating as defined in Section 1.5102 of the Codified Ordinances, and adopted the Erieview plan. Thereafter, by Ordinance No. 2428-60, adopted December 12, 1960 (set forth as Appellant's Appendix F), the City Council made a determination that the area was blighted, deteriorated and deteriorating within the purview of § 1.5102, and approved both the Erieview General Neighborhood Renewal Plan and the Erieview-I Urban Renewal Plan submitted by the Planning Commission. (Both plans were before the trial court as Defendant-Appellee's Exhibits A and C-1.) Subsequently in Section 1 of Ordinance 449-61, adopted February 20, 1961, approving the Loan and Capital Grant contract with the Federal government (quoted above at page 3, and Defendant-Appellee's Exhibit B in the trial court), Council made certain express findings of the conditions in the Erieview area.

In the execution of the adopted Urban Renewal Plan, the City Council adopted on February 28, 1961 Resolution

No. 246-61 declaring its intention to appropriate Appellant's property. On June 6, 1961, notice of the intent expressed in this resolution was served upon Appellant. On June 26, 1961 Council passed Ordinance No. 1524-61 appropriating the Appellant's property "for the purpose of eliminating slum conditions and deterioration in the area herein concerned" and for redevelopment to insure against the recurrence of those conditions. Thereafter followed negotiations between the Appellant and her sons and the City, during which the City attempted to reach an agreement on reasonable and just compensation for Appellant's property so that an appropriation action would not be necessary. Appellant and her sons would not accept any of the City's offers, and so on September 26, 1961 the City was compelled to file in the Common Pleas Court its application to assess compensation; this proceeding to appropriate Appellant's property was styled *City of Cleveland vs. Teresa Grisanti*, Common Pleas Court of Cuyahoga County No. 758,038. More than a month later, on November 3, 1961 the Appellant filed the present action seeking to enjoin the appropriation of her property and all other property in the area that had been determined by the legislative body of the city to be slum, blighted and deteriorated. Pending disposition of this injunction action, the appropriation proceedings were stayed. Following the Ohio Supreme Court's denial on June 13, 1962 of Appellant's application for rehearing in this case, the jury was empaneled in the appropriation case and on July 3, 1962 found the just compensation for Appellant's property to be $67,500; Appellant's motion for new trial in the appropriation case was denied on August 28, 1962.

C. The Decisions Below.

The trial court in its opinion set forth as Appellant's Appendix A ruled against all of the Appellant's objections to the legislative action here involved. The Court of Appeals affirmed (its opinion is set forth as Appellant's Appendix B). The Ohio Supreme Court dismissed the appeal to it on the grounds that no debatable constitutional questions were presented; only five of the seven judges of that Court signed the dismissal order, but the two judges who did not sign did not express a dissent. On June 13, 1962, the Supreme Court denied Appellant's application for rehearing. These Supreme Court journal entries are set forth as Appellant's Appendix E.

It is here appropriate to correct at least one unfounded allegation in Appellant's Jurisdictional Statement. She asserts at pages 5 and 8 that eighty percent of this ninety-six acre area is "vacant." The source of this figure, much less how Appellant defines "vacant," is unknown to Appellee. This figure does not appear in any of the Exhibits or in the trial court's findings. But even assuming the figure to be relevant, a glance at the "Existing Land Use Map" in the Erieview-I Urban Renewal Plan (Defendant-Appellee's Exhibit A in the trial court) demonstrates its gross incorrectness. For the Court's convenience, to illustrate this point as well as to give the Court an idea of the size and the nature of the blighted area here involved, this map is attached hereto as Appendix C.

Appellant still asserts, although the point was disposed of below by the three Ohio courts, that the City's actions are to be measured by the statutory provisions of Chapter 725 of the Ohio Revised Code and not by the urban renewal procedural ordinance adopted by the City Council (set forth herein as Appendix A). On this question—clearly one of purely state concern for the final and ex-

clusive determination by the state courts—the trial judge held "that the city was not bound by the provisions of Rev. Code Section 725.03 or any part of that chapter" (Appellant's Appendix A, page 15A). And the Court of Appeals overruled the Appellant's contention that the home-rule City of Cleveland was bound by the statute rather than by its own procedural ordinance (Appellant's Appendix C, page 43A). Thus the state courts correctly decided that the legislative power here exercised by the City Council was granted directly to it by the state constitution, with the Council exercising thereunder as the City's legislative body this power of local self-government. It thus could not be controlled by an act of the state legislature.

ARGUMENT.

Appellant's attack is against an urban renewal project typical of the multitude across the country that involve the joint efforts of federal and local governments in eliminating the blighted areas of our cities. This means selected by Congress and local legislatures has been held constitutional by this Court and the courts of thirty states.

All of the objections Appellant raises have previously been passed on, adversely to her position, by this Court, and so none present a substantial federal question. Her objection to the trial court's exclusion of evidence proffered to contradict the findings of the legislative body clearly presents no federal question at all. Two issues she seeks to raise were not raised or passed upon in the Ohio courts and so are not properly before this Court.

A. THE QUESTIONS OF THE APPLICABILITY OF THE ORDINANCE OF 1787, AND OF THE LEGALITY OF THE LOAN AND CAPITAL GRANT CONTRACT, WERE NOT RAISED OR PASSED UPON BY THE COURTS BELOW AND SO NEITHER IS PROPERLY BEFORE THIS COURT UNDER 28 U. S. C. § 1257(2).

1. The Ordinance of 1787.

Appellant's assertion of certain rights under the Ordinance of 1787 (the "Northwest Ordinance") was mentioned for the first and only time in her brief filed in the Supreme Court of Ohio (page 40, Jurisdictional Statement). That matter could not be, and was not, passed upon by that court. Under Ohio practice, on an appeal on questions of law only the reviewing court may not delve into matters not raised in the lower court and which are not a proper matter of record. *Goyert & Vogel v. Eicher*, 70 Ohio St. 30 at 34 (1904); *Goldsmith v. State of Ohio*, 30 Ohio St. 208 (1876). More specifically, a constitutional question (if indeed this be one) not raised in either the trial or appellate court is deemed waived on an appeal to the Ohio Supreme Court. *Village of Clarington v. Althar*, 122 Ohio St. 608 (1930); *City of Grandview Heights v. Redick*, 165 Ohio St. 326 (1956); *State ex rel. King v. Shannon*, 170 Ohio St. 393 (1960).

Even if it had been properly raised, the question has been long since disposed of by the holding of this Court in *City of Cincinnati v. Louisville & Nashville Railroad Co.*, 223 U. S. 390 (1912), affirming 82 Ohio St. 466 (1910), that the Ordinance, and in particular Article II which Appellant seeks to invoke, does not apply to a state after its admission into the Union, and in particular did not limit Ohio's power of eminent domain.

2. The Loan and Capital Grant Contract.

Appellant's Question (6) questions the legality of the City's Loan and Capital Grant contract with the United States. Since this is the first time that Appellant has raised this question in any way. ("This action includes the applicability of U. S. C. § 1460(c)"—Jurisdictional Statement, p. 40), it was neither before nor passed upon by the state courts and so Appellant cannot now urge it on this appeal.

B. THE TRIAL COURT'S EXCLUSION OF EVIDENCE TO CONTRADICT THE FINDINGS OF THE LEGISLATIVE BODY DOES NOT PRESENT A FEDERAL QUESTION.

Appellant asserts that in some way she has been denied due process of law by the Ohio courts in their refusal to admit her evidence aimed at contradicting the findings and conclusions of the legislative body, the City Council (and of the City Planning Commission and the Federal Housing and Home Finance Agency). This is but the usual case of the individual attempting to set his conception of facts and judgment against that of the elected legislative body, and presents no constitutional issues.

There were introduced into evidence, part by the Appellant and part by the Appellees, the various reports and factual summaries upon which the legislative body based its determination of the necessity of acquiring property, including Appellant's, in the Erieview area. The trial court could but conclude as it did (Appellant's Appendix A, p. 20a), that the Council had before it facts upon which to exercise its judgment, that there was no evidence of abuse of discretion, and that the action of that legislative body was "the exercise of an honest judgment in good faith and not totally without reason." The Court of Appeals approved the exclusion of Appellant's evidence, and the findings of the trial court, in these words:

"* * * the trial court did not exclude evidence relating to the basis upon which the City Council acted or to any evidence, documentary or otherwise, presented to or before City Council, * * *

* * * * *

"The extensive evidence here shows that the legislative body of the City had before it a great mass of factual data upon which to make its legislative judgment that the area in question is, in fact, a blighted area, deteriorated and deteriorating, and, as a consequence, detrimental to the public health, safety and welfare.

* * * * *

"Having determined that the judicial branch of the government may not substitute its judgment for the legislative branch unless it is clearly shown that the legislative branch has exceeded its constitutional powers or has acted fraudulently or in bad faith, or has abused its discretion, we are obliged to sustain the trial court in rejecting the evidence proffered by the plaintiff. There is no claim here of fraud or bad faith. There is, however, the claim of an abuse of discretion upon the part of the City Planning Commission and the City Council. Upon consideration of the record, the exhibits, and all other evidence, we are of the opinion that the trial judge did not err in finding that there was not an abuse of discretion upon the part of the City Council, acting in its legislative capacity for a public purpose, or upon the part of the Planning Commission, it being understood that the Planning Commission was acting in an official capacity as a fact-finding body for the City Council." (at 36a to 38a).

The exclusion of the proffered evidence was recognition of the limits on the review power of courts inherent in the constitutional concept of separation of powers and of the clear distinction between the scope of judicial re-

view in this case of determining the public necessity and those police power cases where the court is called upon to review an uncompensated infringement on individual rights. This is in accord with the settled law of Ohio (*State ex rel. Waltz v. Michell*, 124 Ohio St. 161 (1931); *Village of South Euclid v. Bilkey*, 126 Ohio St. 505 (1933); *State ex rel. Kittel v. Bigelow*, 138 Ohio St. 497 (1941)), and of this Court (*Wabash Railroad Co. v. Defiancé*, 167 U. S. 88 (1897)).

In the *Wabash Railroad* case, *supra*, this Court at an early date approved the salutory exclusionary rule applied by the Ohio courts in our case. In the state supreme court (*Railroad Company v. Defiance*, 52 Ohio St. 262, 40 N. E. 89 (1895)), the railroad objected to the trial court's exclusion of expert opinions on the dangers involved in a street improvement and of evidence of the discussions of council while considering the improvement ordinance. The Ohio court held that the company was not prejudiced by the exclusion, since the trial court could not consider such evidence anyway:

> "The final action of the council in the adoption of the ordinances, gave them their validity and the vote on their adoption was the exercise, by the members of that body, of their deliberate judgment, after all the consideration they had given the subject. *Of the necessity or expediency of the improvements thereby directed to be made, they were the sole judges, and in the absence of fraud, their determination upon those questions cannot be judicially revised.*" (At 318; emphasis added.)

This Court affirmed, 167 U. S. 88 (1897), expressing its approval of the exclusion:

> "* * * we are not at liberty to inquire whether the discretion vested in the common council of determining this question was wisely exercised; or what

> the motives were for making the change; or whether the crossing so improved was burdensome to the railroad company; or made unsafe to persons crossing the tracks. These were considerations which might properly be urged upon the common council as arguments against the proposed change; but it is beyond the province of the courts either to praise the wisdom or criticize the unwisdom of such action." (at page 102.)

This Court has consistently upheld the exclusion of evidence aimed at contradicting legislative findings of fact, holding the exclusion not to present a federal constitutional question. If the legislature (as is the Cleveland City Council in our case), or an arm of the legislature made a finding of fact that was not in fact correct, fair or just, or perhaps even fraudulent, such would "not necessarily involve any question of a Federal nature," and to such objection the state court decision would be conclusive: *Lent v. Tillson*, 140 U. S. 316 at 334 (1891). The determination that a special benefit extends to certain property for the purposes of special assessment "is of necessity a question of fact, and when the legislature determines it in a case within its general power, its decision of course will be final," *Spencer v. Merchant*, 125 U. S. 345 at 353 (1888); such a determination, even in the face of an allegation that part of the property is not in fact benefited, "is a matter of detail with which this court cannot interfere, if it were clearly so * * *." *Davidson v. New Orleans*, 96 U. S. 97 at 106 (1878). And in *United States v. Twin City Power Co.*, 350 U. S. 222 at 224 (1956) this Court said:

> "It is not for courts, however, to substitute their judgments for congressional decisions on what is or is not necessary for the improvement or protection of navigation * * *."

A relevant case dealing in some detail with review of administrative—not even legislative—fact finding in the determination of the necessity of acquiring certain property by eminent domain is *United States v. Carmack*, 329 U. S. 230 (1946), reh. den. 329 U. S. 834 (1947). The district court dismissed the government's condemnation petition, on the basis of its finding that an official had acted capriciously and arbitrarily in selecting a site for the construction of a Federal post office. This Court held that the selection of the final site "out of 22 sites suggested, and out of two closely balanced alternatives, constituted an administrative and legislative decision not subject to judicial review on its merits" (p. 243), and concluded at page 247:

> "The finding of the District Court on the second trial that the selection of the park site 'amounts in law to an arbitrary and unnecessary act' appears, from the context, to have been a finding largely of the comparative undesirability and lack of necessity for the selection of that site and not to have been a finding that the selection had been made without adequate determining principle and without reason. The comparative desirability and necessity for the site were matters for legislative or administrative determination rather than for a judicial finding."

Perhaps the best statement of the rule that courts will not review legislative findings of facts, and the reasons therefor, is made by Mr. Justice Brewer in *United States v. Des Moines Navigation and Railway Company*, 142 U. S. 510 (1892), a case in which the validity of a state statute was attacked:

> "* * * The knowledge and good faith of a legislature are not open to question. It is conclusively presumed that a legislature acts with full knowledge, and in good faith. It is true the bill alleges that its

passage was induced by the navigation company, by false representations and threats of suits; but such an allegation amounts to nothing. In Cooley's Constitutional Limitations, (5th ed. 222), the author, citing several cases, observes: 'From what examination has been given to this subject, it appears that whether a statute is constitutional or not is always a question of power; that is, a question whether the legislature in the particular case, in respect to the subject matter of the act, the manner in which its object is to be accomplished and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions. In any case in which this question is answered in the affirmative, the courts are not at liberty to inquire into the proper exercise of the power. They must assume that legislative discretion has been properly exercised. If evidence was required, it must be supposed that it was before the legislature when the act was passed; and if any special finding was required to warrant the passage of the special act, it would seem that the passage of the act itself might be held to be equivalent to such finding. And, although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the legislature where fraud and corruption were alleged, and annul their action if the allegations were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon.' See also *Fletcher v. Peck*, 6 Cranch, 87; *Ex parte McCardle*, 7 Wall. 506; *Doyle v. Continental Insurance Co.*, 94 U. S. 535; *Powell v. Pennsylvania*, 127 U. S. 678" (at pp. 544-5.)

None of the cases cited by Appellant are relevant, for none advert to any constitutional issue relative to the exclusion of evidence. And all are distinguishable on additional bases. *Mumpower v. Housing Authority of City of Bristol*, 176 Va. 426, 11 S. E. (2d) 732 (1940), was not an

eminent domain case, the question being whether under the police power the state could create a public housing authority. Appellant reads into *Schenck v City of Pittsburgh*, 364 Pa. 31, 70 A. 2d 612 (1950), a statement that judicial review may be had via evidence adduced at the trial; we can find no such allusion, although the court does state in dictum at page 614 that review might be available in cases of fraud or palpable bad faith.

Four of Appellant's cases are further distinguishable as involving the question whether administrative agencies had exceeded their statutory power. *Bahr Corporation v. O'Brion*, 146 Conn. 273, 149 A. 2d 691 (1959); *Gohld Realty Co. v. City of Hartford*, 141 Conn. 135, 104 A. 2d 365 (1954); *Board of Water Comm'rs v. Johnson*, 86 Conn. 151, 84 A. 727 (1912); *Bristol Redevelopment and Housing Authority v. Denton*, 198 Va. 171, 93 S. E. 2d 288 (1956). Another case cited, *Connecticut College for Women v. Calvert*, 87 Conn. 421, 88 A. 633 (1913), held that the legislature had no power to delegate to a private college the powers of eminent domain, and so is completely irrelevant.

Appellant's quotation from *Offen v. City of Topeka*, 186 Kans. 389, 350 P. 2d 33 (1960), has more meaning in context. There the court merely overruled a demurrer to the petition alleging arbitrary and capricious action; there was no ruling upon the admissibility of evidence.

Appellant does not, and can not, cite any case elevating a court's refusal to admit evidence to contradict legislative findings of fact to the level of a constitutional right; to the contrary, the cases cited above by Appellees hold that there is no such right. And so here Appellant has not raised a Federal question.

Approaching the issue differently, if as discussed in the next section Appellant was not constitutionally entitled

to notice and hearing and the opportunity to present facts before the Cleveland legislative body made its determination, by a parity of reasoning she is not constitutionally entitled subsequently to attack in the courts those legislative findings of facts.

C. THE OTHER QUESTIONS RAISED BY APPELLANT AND PASSED ON BY THE OHIO COURTS ARE SO UNSUBSTANTIAL AS TO NOT REQUIRE ANY FURTHER ARGUMENT.

1. Appellant Was Not Constitutionally Entitled to Notice and an Opportunity to be Heard Before the City's Legislative Body Made its Findings of Fact and Determined the Necessity of Appropriating Property in the Erieview Area.

Appellant raises a due process objection to the failure to give her notice and opportunity to be heard before the City Council made its findings, determined the necessity of clearance and redevelopment of the Erieview area as a slum, blighted, deteriorated and deteriorating area, and adopted the Erieview plan. [Appellant received the ten-day notice of the Planning Commission hearing mailed to property owners as required by § 1.5104 of the Cleveland urban renewal legislation (Jurisdictional Statement, page 9). A recommendation by that Commission is required by the Cleveland legislation (§§ 1.5104, 1.5105—Appendix A herein) as a necessary condition precedent to the action of the Cleveland City Council of which Appellant complains. That notice of the Commission hearing, even if constitutionally required, satisfied due process requirements. *Hanover National Bank v. Moyses*, 186 U. S. 181 (1902); *Goodrich v. Ferris*, 214 U. S. 71 (1909).] Existing procedural requirements contained in the local renewal legislation, § 1.5105 of the Codified Ordinances of Cleveland (Appen-

dix A herein), do not require a hearing before the legislative body, the Council, makes its findings of fact and adopts the plan. Nor is such a hearing required by due process.

None of the cases relied on by Appellant involve the legislative determination of necessity in eminent domain procedure. In particular, the case of *State of Washington ex rel. Oregon Railroad and Navigation Co. v. Fairchild*, 224 U. S. 510 (1912), the basis for Appellant's discussion of this question at pages 35-38 of her Jurisdictional Statement, is totally inapplicable, involving as it did the exercise of delegated police power by an administrative agency having the effect of taking property without compensation.

Many decisions of this Court, which Appellant chooses to ignore, hold that due process does not require notice and hearing before the legislative determination of the necessity of the taking, and that due process is satisfied when the owner receives notice and hearing in the proceeding to appropriate his property, as Appellant has in this case in the separate appropriation action. The rule was stated by this Court in *Rindge Company v. County of Los Angeles*, 262 U. S. 700 at 709 (1923):

> "* * * And so construed this statute is not in conflict with the Fourteenth Amendment, either because it fails to provide for a hearing by the landowners before such resolution is adopted, or otherwise. The necessity for appropriating private property for public use is not a judicial question. This power resides in the legislature, and may either be exercised by the legislature or delegated by it to public officers. 'Where the intended use is public, the necessity and expediency of the taking may be determined by such agency and in such mode as the State may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the Four-

teenth Amendment.' *Bragg v. Weaver*, 251 U. S. 57, 58. 'That the necessity and expediency of taking property for public use is a legislative and not a judicial question is not open to discussion. * * * Neither is it any longer open to question in this Court that the legislature may confer upon a municipality the authority to determine such necessity for itself. * * * The question is purely political, does not require a hearing, and is not the subject of judicial inquiry.' *Joslin Mfg. Co. v. Providence, ante*, 668."

In *Sears v. City of Akron*, 246 U. S. 242 (1918), the Court stated:

> "Plaintiff contends that the ordinance is void because the general statute which authorized the appropriation violates both Article I, § 10, of the Federal Constitution and the Fourteenth Amendment, in that it authorizes the municipality to determine the necessity for the taking of private property without the owners having an opportunity to be heard as to such necessity; that in fact no necessity existed for any taking. * * * It is well settled that while the question whether the purpose of a taking is a public one is judicial, * * * the necessity and the proper extent of a taking is a legislative question." (at p. 251.)

Even in the relatively novel context of the elimination of blight conditions Appellant's argument has been held to be without merit. For example, in *Robinette v. Chicago Land Clearance Commission*, 115 F. Supp. 669 (N. D. Ill., 1951), the court ruled that "The hearing, therefore, in the suit in which it is sought to acquire property by eminent domain * * * fulfills all the requirements of due process of law" (at 673). And in *Wilson v. City of Long Branch*, 27 N. J. 360, 142 A. 2d 837 (1958), cert. den. 358 U. S. 873 (1958), the New Jersey Supreme Court stated:

> "It seems plain that so far as the investigation of the matter of blight is concerned, the demands of due

process did not call for a hearing at all. * * * That determination might constitutionally have been left for *ex parte* action by the governing body or the planning board." (142 A. 2d at 851.)

2. The Acquisition of the Erieview Area, Including Appellant's Property, Is for a Public Purpose and Use.

Appellant's claim that the acquisition of her property is for a private purpose in violation of the United States Constitution does not present any substantial federal question, for this exercise of legislative power by the home-rule City of Cleveland clearly falls under the constitutional aegis of several decisions, among others, of this Court—*Berman v. Parker*, 348 U. S. 26 (1954); *United States ex rel. Tennessee Valley Authority v. Welch*, 327 U. S. 546 (1946); *Burt v. Pittsburgh*, 340 U. S. 802 (1950); *Starr v. Nashville Housing Authority*, 354 U. S. 916 (1957).

This appeal does not present an isolated instance of a declaration by a single state of a novel public purpose and use. Congress, acting as the legislature for the District of Columbia, has declared the public need for blight elimination and urban redevelopment in the Capital (60 Stat. 790 (1946), as amended 72 Stat. 1102 (1958)); area redevelopment thereunder has been approved by this Court. *Berman v. Parker, supra.* And Congress, in enacting the slum and blight clearance and urban renewal law (42 U. S. C. §§ 1441-1462) under which the Erieview plan is being executed, found that the national welfare required that metropolitan areas throughout the country undertake the elimination of existing slum and blighted conditions (as Cleveland is doing in this case) and the prevention of the occurrence of those conditions. At least 45 state legislatures have enacted statutes similar to the Cleveland urban renewal "statute" (Appendix A), declaring that the

elimination, and the prevention, of conditions of blight and deterioration as defined in Section 1.5102 of the Cleveland ordinances, constitutes a public purpose. Those state statutes, and particular projects thereunder, have been held constitutional by this Court in *Burt v. City of Pittsburgh* and *Starr v. Nashville Housing Authority, supra,* and by the courts in 30 states, and disapproved in only one, South Carolina. Those state cases are cited in Appendix B herein.

This tide of state and federal legislative and judicial determinations should not be ignored by this Court, which repeatedly has asserted that a local legislative determination of public use, particularly when approved by the state courts, is entitled to the greatest deference.

At the outset Appellant's misconception of the public purpose question, urged in the Ohio courts and carried over into her Jurisdictional Statement, must be corrected. The question is not whether Ordinance No. 2428-60 (quoted by Appellant as App. F) or any other element of the Erieview plan alone, provides for a public purpose. Instead, the question is whether the acquisition of any area described in Section 1.5102 of the Cleveland Codified Ordinances is for a public purpose. That procedural ordinance, adopted in 1955, is set forth in full in Appendix A herein and was Joint Exhibit A before the trial court. Section 1.5102 (quoted above at page 2) of the basic urban renewal "statute" enacted by the home-rule City of Cleveland under power directly granted to it by the Ohio Constitution, states that an area shall be determined to be a blighted or deteriorated area if certain enumerated conditions are found to exist. It was under this ordinance that the Council made its findings and adopted the Erieview Plan.

Council, the legislative body, had before it when it made its findings of fact its own knowledge, and the findings of the City Planning Commission which in turn were based on reports by city inspectors, officials and special consultants. Council thereupon in Ordinance No. 2428-60 (Appellant's Appendix F) determined the Erieview area to be blighted, deteriorated and deteriorating. Subsequently Council made detailed findings of fact in Section 1 of Ordinance No. 449-61 (Defendants-Appellees' Exh. B in the trial court), adopted February 20, 1961, approving the Loan and Capital Grant Agreement with the Housing and Home Finance Agency. That section, quoted above at page 3, expressly accepted the Urban Renewal Director's report (Defendant-Appellees' Exh. B-2 in the trial court) summarizing the findings of the building inspectors and special consultants and the Planning Commission, and in addition found that:

> "* * * the Erieview I Project (Ohio R-36) area is not only a blighted, deteriorated, and deteriorating area but is also a slum area detrimental to and a menace to the public safety, health, morals, and general welfare most particularly of the thousands of people who live in, work in, own property in, and otherwise use the project area and immediate vicinity, as well as the people of the City of Cleveland because an overwhelming preponderance of the structures in the project area is detrimental to the public health, safety, and welfare by reason of age, dilapidation, overcrowding, faulty arrangement, lack of ventilation or sanitary facilities, mixture of incompatible land uses as is evidenced by the failure of said structures to conform to the provisions of the Codified Ordinances of the City of Cleveland relating to building, housing and sanitation, unsafe conditions, deterioration of site improvements and other conditions which endanger life and property by fire or other causes * * *."

The trial judge in the Common Pleas Court of Cuyahoga County and the three judges of the Court of Appeals of Cuyahoga County (opinions quoted as Appellant's Appendices A and C) found (1) that the acquisition of property in a blighted, deteriorated and deteriorating area as defined by Section 1.5102 of the Ordinances of Cleveland is for a public purpose and for the public welfare, and (2) that the City Council, acting upon facts before it and following the ordinance procedure, had found the Erieview area to be such an area and had declared the necessity of acquiring the land in the area. The State Supreme Court dismissed Appellant's appeal, without opinion, as not presenting any debatable constitutional questions. (Two judges did not sign the dismissal, but did not express dissent.) With these legislative determinations, approved by the Ohio courts, Appellant disagrees.

It is a principle long established in this Court that its review, if indeed any, of local determinations of public use is most limited. It has held that the Fifth Amendment, relied upon by the Appellant, does not apply to state action. *Fallbrook Irrigation District v. Bradley,* 164 U. S. 112 at 158 (1896). Its limited review rule under the Fourteenth Amendment is best stated in a Fifth Amendment case, *United States ex rel. Tennessee Valley Authority v. Welch,* 327 U. S. 546 (1946), noting that a determination of public use by a state has never been overturned, a record which stands to date:

> "We think that it is the function of Congress to decide what type of taking is for a public use and that the agency authorized to do the taking may do so to the full extent of its statutory authority. *United States v. Gettysburg Electric R. Co.,* 160 U. S. 668, 679. It is true that this Court did say in *Cincinnati v. Vester,* 281 U. S. 439, 446, that 'It is well established that in considering the application of the Fourteenth

Amendment to cases of expropriation of private property, the question what is a public use is a judicial one.' But the Court's judgment in that case denied the power to condemn 'excess' property on the ground that the state law had not authorized it. And in *Hairston v. Danville & Western R. Co.*, 208 U. S. 598, 607, this Court, referring to the 'rule' later stated in the *Vester* case, said that 'No case is recalled where this court has condemned as a violation of the Fourteenth Amendment a taking upheld by the state court as a taking for public uses in conformity with its laws.' And see *Madisonville Traction Co. v. Mining Co.*, 196 U. S. 239, 257, 260-261. But whatever may be the scope of the judicial power to determine what is a 'public use' in Fourteenth Amendment controversies, this Court has said that when Congress has spoken on this subject 'Its decision is entitled to deference until it is shown to involve an impossibility.' *Old Dominion Co. v. United States*, 269 U. S. 55, 66. *Any departure from this judicial restraint would result in courts deciding on what is and is not a governmental function and in their invalidating legislation on the basis of their view on that question at the moment of decision, a practice which has proved impracticable in other fields.*" (At pp. 551-52; emphasis added.)

Paragraph 1 of the syllabus in *Rindge Company v. County of Los Angeles, supra*, a Fourteenth Amendment case, states the law:

"Whether a use for which private property is taken is public or private is a judicial question the determination of which is influenced by local conditions; and this Court, while enforcing the Fourteenth Amendment, should keep in view the diversity of such conditions, and regard with great respect the judgments of state courts upon what should be deemed public uses."

In its opinion in *Berman v. Parker*, 348 U. S. 26 (1954), this Court approved the area-wide concept of

urban redevelopment in the District of Columbia against the same attacks now made by Appellant, and held that the rights of property owners in a blighted area are satisfied when they "receive that just compensation which the Fifth Amendment exacts as the price of the taking" (at p. 36). At page 32 this Court described the virtual impregnability of the state or federal legislative determination of public use or public interest:

> "* * * Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia (see *Block v. Hirsh*, 256 U. S. 135) or the States legislating concerning local affairs. See *Olsen v. Nebraska*, 313 U. S. 236; *Lincoln Union v. Northwestern Co.*, 335 U. S. 525; *California State Association v. Maloney*, 341 U. S. 105. This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one. See *Old Dominion Co. v. United States*, 269 U. S. 55, 66; *United States ex rel. T. V. A. v. Welch*, 327 U. S. 546, 552."

It concluded at pp. 35, 36:

> "It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch. See *Shoemaker v. United States*, 147 U. S. 282, 298; *United States ex rel. T. V. A. v. Welch, supra*, 554; *United States v. Carmack*, 329 U. S. 230, 247."

In an earlier decision involving exactly the same type blighted area and the same objections as now before the Court, *Burt v. City of Pittsburgh*, 340 U. S. 802 (1950), this Court approved the acquisition of the appellant's property, located in a 23-acre commercial area in downtown Pittsburgh found to be blighted. In her injunction action in the District Court (N. D. Penn., No. 8706) Burt claimed that the commercial area was not blighted and that the finding of blight by the Redevelopment Agency and the City Council was arbitrary, capricious and without basis in fact, and that both the redevlopment plan and the statute under which it was adopted were unconstitutional as permitting the exercise of the power of eminent domain for private use. The findings held to justify the exercise of the power of eminent domain in *Burt* were far less explicit than in our case—the area was inadequately planned, had excessive land coverage and a faulty street and lot layout, and was being put to an economically and socially undesirable use.

In its unreported decision (quoted as Appendix A to the *Burt* Jurisdictional Statement) the three judge district court granted the defendant's motion to dismiss, finding nothing in the plaintiff's complaint or exhibits to sustain her constitutional objections. It noted that the Pennsylvania Supreme Court had earlier held the statute to be constitutional in *Belovsky v. Redevelopment Authority of the City of Philadelphia*, 357 Pa. 329, 54 A. 2d 277 (1947) and in *Schenck v. City of Pittsburgh*, 364 Pa. 31, 70 A. 2d 612 (1950) had upheld the constitutionality of the very same Pittsburgh plan.

On Burt's appeal, this Court granted the appellee's motion to affirm the dismissal, the *per curiam* decision at 340 U. S. 802 (1950) citing only *U. S. ex rel. T. V. A. v.*

Welch, supra. Thus twelve years ago this Court approved the exercise of eminent domain, in the face of the same constitutional objections, based on legislative determinations of fact and necessity similar to, and indistinguishable in theory from, those in our case.

Two other federal court urban renewal decisions further demonstrate the lack of substance of the issues raised by Appellant. Redevelopment of a 70 acre commercial area, together with a residential area, adjoining that involved in the *Berman* litigation, was approved in *Donnelly v. District of Columbia Redevelopment Land Agency*, 269 F. 2d 546 (D. C. Ct. App. 1959), cert. den. 361 U. S. 949 (1960), reh. den. 362 U. S. 914 (1960). All of the appellant's contentions, as stated in Judge Washington's opinion for the unanimous Court of Appeals, had "been answered by the Supreme Court in *Berman v. Parker*, * * * and that by reason of that decision we are bound to reject them. No doubt there are limits to what can be done in the name of 'redevelopment,' but those limits —as set by the Berman case—have not been exceeded here" (at p. 547). The second important case is *Starr v. Nashville Housing Authority*, 145 F. Supp. 498 (M. D. Tenn. 1956), affirmed *per curiam* at 354 U. S. 916 (1957), citing only *Berman v. Parker, supra.* The Court there upheld the constitutionality of the acquisition of the plaintiff's commercial property (found by the district court not itself to be blighted) for the purpose of eliminating blighted conditions in an area and redeveloping the area for purely commercial use.

Appellant argues that redevelopment by private enterprise, required by the federal law (28 U. S. C. § 1455 (a) (ii)) and the Cleveland procedural ordinance (§ 1.-5105, Appendix A herein), renders the acquisition of prop-

erty, and in particular hers, in the Erieview area a taking for a private use. This is untenable in the face of this Court's pronouncement in *Berman v. Parker, supra,* at 33-4:

> "* * * Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. See *Luxton v. North River Bridge Co., supra; cf. Highland v. Russell Car Co.*, 279 U. S. 253. The public end may be as well or better served through an agency of private enterprise than through a department of government—or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects."

The same argument was held to be without merit in the first Ohio urban redevelopment case, *State ex rel. Bruestle v. Rich*, 159 Ohio St. 13, 110 N. E. 2d 778 (1953), holding that the elimination and the prevention of the recurrence of conditions of blight was a public purpose, and that redevelopment by private enterprise was the means to that end selected by the legislature in the exercise of its discretion. The same objection has been made and rejected in the other state court decisions cited in Appendix B, as well as in this Court in *Starr v. Nashville Housing Authority* and *Burt v. City of Pittsburgh, supra.*

Seeking to evade the effect of these myriad holdings the Appellant urges as novel the fact that the City had entered into a contract to sell her land to a private rede-

veloper before it had acquired the parcel from her. This is neither a novel nor a distinguishing fact. It is but a detail in the legislative determination of the means of carrying out the public purpose. If citation be necessary, the precise question has been before this Court, and rejected. In support of her private use argument the appellant in *Burt v. City of Pittsburgh, supra*, urged the fact that on the same day the Pittsburgh City Council approved the redevelopment plan it also approved the proposed contract with the private redeveloper; subsequently, and still before the city took action to acquire her property, the Pittsburgh Urban Redevelopment Authority and the private redeveloper entered into a contract obliging the Authority to acquire the blighted area and to give title immediately to the redeveloper. As an extenuating fact, not present in our case, it was not public money, but the money of the private redeveloper that would be used by the Authority to pay for property acquired. (These facts are from Appellant Burt's Statement as to Jurisdiction, p. 10.) This Court affirmed the district court's dismissal of Burt's injunction action.

CONCLUSION.

If it were to assume jurisdiction of this appeal this Court would be asked to review the legislative and judicial determinations of the State of Ohio that the elimination of blighted urban areas and their redevelopment to prevent recurrence of the conditions of blight is a public purpose and use. Further, the Court would be called upon to review the determination of the particular area to be redeveloped, which determination was made by the Cleveland City Council exercising legislative powers granted directly to it by the state constitution.

It is respectfully submitted that the questions that are properly before this Court have all previously been answered adversely to the Appellant by this Court, and so the appeal presents no substantial federal question. Therefore Appellees' motion to dismiss this appeal should be granted.

Respectfully submitted,

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APPENDIX A.

Section 1.3102-1.5108, Codified Ordinances of the City of Cleveland—The Urban Renewal "Statute" Under Which the City's Legislative Body Has Acted.

§ 1.5102 AREA RENEWAL, REHABILITATION AND CONSERVATION.

When the City Planning Commission, as a result of investigation and study, at the request of the Mayor or the Council, or upon its own initiative, has determined the existence of a blighted, deteriorated or deteriorating area within the City, it shall prepare a renewal plan for such area which shall be designated "Urban Renewal Plan for Area" * * *

The Urban Renewal Plan for such area may involve slum clearance and redevelopment, or rehabilitation or conservation, or any combination or part thereof. An area shall be determined to be a blighted or deteriorated area if (1) a preponderance of the structures therein is detrimental to the public health, safety or welfare by reason of age, dilapidation, over-crowding, faulty arrangement, lack of ventilation or sanitary facilities, or any combination of these factors, and which is detrimental to the public health, safety or welfare because a preponderance of structures within said area fails to conform in one or more respects to the provisions of the Codified Ordinances of the City of Cleveland relating to building, housing and sanitation; or (2) there is a predominance of defective or inadequate street layout, or faulty lot layout in relation to size, adequacy, accessibility or usefulness, or unsanitary or unsafe conditions, or deterioration of site improvements, or conditions which endanger life or property by fire or other causes.

An area shall be determined to be a deteriorating area requiring rehabilitation and conservation if such area, whether within or apart from a blighted or deteriorated area, within the corporate limits of the City contains obsolete or sub-standard structures, or incompatible land uses, or both, which substantially impair or arrest the sound growth of the area, retard the provision of necessary housing accommodations or constitute an economic or social liability or a danger to the public health, safety, morals or general welfare, in its present condition and use.

"Rehabilitation" or "Conservation" for the purposes of this chapter may include but shall not be limited to the restoration and renewal of a deteriorating area by carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan.

The Cleveland Urban Renewal Agency shall cooperate and assist in the preparation of said plan and shall prepare a statement of a feasible method for the temporary relocation of families displaced from the development area, and that there are or are being provided, in the development area or other areas not less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families to be displaced from the development area, decent, safe and sanitary dwellings for such displaced families.

(Ord. No. 2341-55. Passed October 17, 1955. Effective October 17, 1955.)

§ 1.5103 URBAN RENEWAL PLAN.

The Urban Renewal Plan for each Urban Renewal area shall conform to the general plan of Cleveland as adopted in 1949 by official action of the City Planning

Commission, pursuant to Section 76-2 of the Charter of the City of Cleveland, and as said general plan may be amended from time to time by said commission, and to the general development plan for the district of the City within which the Urban Renewal area lies, and with the workable program of the City for the elimination and prevention of slums and blight. The Urban Renewal plan shall include a description of the boundaries of the Urban Renewal area and any redevelopment, rehabilitation and conservation area constituting a part thereof, a land use plan showing location, character and extent of public and private land ownership, use, and occupancy proposed within the area. The plan shall define areas of land acquisition, demolition and removal of structures and of rehabilitation and conservation as may be proposed to be carried out in the urban renewal area; and shall include a statement of methods and standards under which the same is to be accomplished and the necessary controls to be applied in order to effect the rehabilitation and conservation by the owners of existing properties. The Urban Renewal Plan shall include a statement of the relationship of the plan to definite objectives of the City respecting appropriate land uses, improved traffic and transportation, public utilities, recreational and community facilities and other public improvements.

The Urban Renewal Plan shall include provision that every contract for the sale, lease, use or redevelopment of the property within such area shall contain such restrictions and conditions as are deemed necessary to prevent a recurrence of blighted or substandard areas, provided that no such restriction shall be based upon race, creed, or color; shall indicate what covenants, restrictions and conditions of such contracts shall be covenants run-

ning with the land; shall provide appropriate remedies for any breach of said covenants or conditions; shall provide that each redevelopment contract for the sale, lease, use or redevelopment of the property within such area, and each conveyance of land pursuant thereto shall contain conditions and covenants which shall run with the land which shall provide that there shall be no discrimination against or segregation of any person or group of persons based upon race, color, religion, national origin or ancestry in the sale, lease, sub-lease, transfer, occupancy, tenure or enjoyment of such land in perpetuity; and that such redevelopment contracts and conveyances of land within the area shall contain a covenant that no grantee himself, or any person claiming under or through him, shall establish or permit any such practice or practices or discrimination or segregation with reference to the selection, location, number, or occupancy of tenants, lessees, sub-lessees or vendees in any or all of the land within such area.

(Ord. No. 2341-55. Passed October 17, 1955. Effective October 17, 1955.)

§ 1.5104 Adoption of Plan.

The City Planning Commission after at least one public hearing shall adopt a plan for the renewal of the area described in such plan. Notice of such hearing shall be published once a week for two consecutive weeks in the City Record, and if required by regulation of the agency of the Federal Government concerned with the particular urban renewal area, in such additional manner as may be required. Such notice shall contain the time, place, date and purpose of such hearing, a description of the proposed renewal area, and shall state that the required documents comprising the Urban Renewal Plan are avail-

able at the place or places designated in said notice. Publication of said notice shall be commenced not less than fourteen (14) days prior to the public hearing and notice of such hearing shall be mailed to the last known owner of each parcel of land in the renewal area or at the last known address of such owners as shown by the records of the County Auditor, not less than ten (10) days prior to said public hearing. The public hearing may be adjourned from time to time without further notice. If after public hearing the boundaries of the Urban Renewal area are amended so as to include any property not included in the description of the proposed renewal area set forth in the notice of public hearing, further notice shall be given to the owners of such property in the same manner as for the original hearing. The City Planning Commission may amend any Urban Renewal Plan adopted in the same manner as said plan was originally adopted. Amendments as a result of public hearings shall not require further notice or additional public hearings.

(Ord. No. 2341-55. Passed October 17, 1955. Effective October 17, 1955.)

§ 1.5105 APPROVAL OF PLAN.

The Council upon receipt of the plan adopted as provided in Section 1.5104 shall cause the same to be received as a matter of permanent record and filed with the Clerk of Council to be made available for public inspection and information. Before the renewal plan for any area shall become effective the Council by ordinance shall approve said plan. The ordinance approving the plan submitted by the City Planning Commission shall include a finding and determination that the area is a blighted, deteriorated, or deteriorating area and that the plan has been adopted

in compliance with the provisions of Section 1.5104, is in conformity with the general plan of the City of Cleveland and the workable program for the elimination and prevention of slums and blight and with the requirements of Section 1.5103; that said plan will afford maximum opportunity consistent with the sound needs of the City as a whole for the rehabilitation, conservation or development of the Urban Renewal Area by private enterprise; and that the financial aid, if any, to be provided by the Federal Government is necessary to the execution of the plan. The approval by Council of the plan submitted by the City Planning Commission in its original form or as amended by Council, shall constitute the authority to expend general tax revenues, appropriated for such purpose, the proceeds of bonds authorized and issued for such purpose, and to accept gifts, donations, and grants from the Federal Government, the State of Ohio, other public bodies, or from any other entity or person. The standards and control embodied in said plan so adopted and approved shall thereupon become enforcible in the same manner as the ordinances of the City.

(Ord. No. 2341-55. Passed October 17, 1955. Effective October 17, 1955.)

§ 1.5106 PROSECUTION OF PLAN.

The Cleveland Urban Renewal Agency shall administer the plan adopted and approved as provided in this Chapter. If the ordinance approving said plan finds that assistance of the Federal Government is necessary to enable the project to be undertaken, including, but not limited to, the financing of the costs of acquisition, clearance and site improvement of the land within the renewal

area in accordance with said plan, the City of Cleveland shall have authority to make application to the Federal Government for such financial assistance and to do and perform such things and acts as may be necessary for such purpose. When authorized by ordinance of Council the Mayor shall execute any and all contracts on behalf of the Cleveland Urban Renewal Agency.

(Ord. No. 2341-55. Passed October 17, 1955. Effective October 17, 1955.)

§ 1.5107 DEMOLITION OF EXISTING BUILDINGS AND STRUCTURES.

It is hereby determined that the public improvement of the site clearance by the demolition of existing buildings and structures upon lands acquired, or in the process of being acquired, pursuant to the plan for the urban renewal of any area in the City of Cleveland shall be made by contract duly let to the lowest responsible bidder after competitive bidding for a gross price. More than one building, structure or premises may be included in the Invitation to Bid, and in such event, the bidders shall be asked to submit a proposal on each, all or any combination thereof. The specifications for such work shall provide that no building or structure shall be removed from the premises in whole or in substantially whole condition but shall be demolished on the premises; that the bidder shall furnish evidence of sufficient equipment and personnel for the speedy performance of the work; that the time for completion of the work shall be fixed by the City; and that the City reserves the right to limit the number of contracts awarded to any one bidder in order to insure the speedy completion of the site clearance of any urban renewal area. The Mayor is hereby authorized and directed to enter into such contracts

as are awarded by the Board of Control in conformity herewith.

(Ord. No. 951-57. Passed May 20, 1957. Effective May 22, 1957.)

§ 1.5108 RELOCATION OF INDUSTRY DISPLACED BY URBAN RENEWAL PROJECTS OR PUBLIC IMPROVEMENT.

When any urban renewal plan, in whole or in part, designates an area to be redeveloped for industrial use, priority in the sale of such land acquired or to be acquired by the City for such redevelopment shall be given in the following order:

1. To industry already located within the urban renewal area, for expansion.

2. To industry displaced or about to be displaced by any of the City's urban renewal projects.

3. To industry displaced or about to be displaced by any public improvement in the City of Cleveland.

4. To other industry desiring to locate within the particular project area.

The land acquired or to be acquired by the City for resale for industrial redevelopment may be sold without competitive bidding through direct negotiations with any industry qualifying under the above Priorities 1, 2, or 3 for a purchase price to be not less than the City's acquisition price, including court costs, title fees and the cost of advertising.

As to industry which does not qualify under the aforesaid Priorities 1, 2, or 3, land to be redeveloped for industrial use within the project area shall be sold in the manner and in accordance with the applicable terms and conditions relating to the sale of other project lands to be redeveloped.

The purchaser qualifying under the above Priorities 1, 2, or 3 shall sign a Project Agreement for all of the land he proposes to purchase and shall, concurrently with the signing of said Agreement, deposit the amount of the purchase price which he agrees to pay for the parcel or parcels then owned by the City, and as to parcels yet to be acquired by the City, shall deposit upon request an amount to be specified based on the appraised value thereof, and shall agree to deposit such additional sum or sums as may be required to complete the purchase price agreed to between the purchaser and the City when the acquisition cost to the City has been determined.

The Project Agreement shall be in form and manner substantially as required by the City for the disposition of land in urban renewal areas under which the purchaser agrees to redevelop the land in accordance with the approved Project Urban Renewal Plan.

No sale, pursuant to negotiation, of any land to industry qualifying under the hereinbefore described Priorities 1, 2 or 3 shall be made unless an advertisement for proposals shall first be published in the City Record for not less than two (2) successive weeks, and in a newspaper or newspapers of general circulation in the City of Cleveland for not less than thirty (30) days (once each week for four (4) successive weeks), prior to the date specified in such advertising for the receipt of such proposals.

The Project Agreement and the parcels will be awarded to the industry who, in the opinion of the Board of Control, will devote the land to the best industrial use in carrying out the approved Project Urban Renewal Plan.

(Ord. No. 2202-58. Passed November 24, 1958. Effective November 28, 1958.)

APPENDIX B.

Decisions in Thirty States Hold the Elimination of Conditions of Blight in Urban Areas, with Redevelopment by Private Enterprise, to Be a Public Purpose and Use.

Alabama:

Blankenship v. City of Decatur, 269 Ala. 670, 115 So. 2d 459 (1959); *Opinion of the Justices*, 254 Ala. 343, 48 So. 2d 757 (1950).

Arkansas:

Rowe v. Housing Authority of City of Little Rock, 220 Ark. 698, 249 S. W. 2d 551 (1952).

California:

Redevelopment Agency of City and County of San Francisco v. Hayes, 122 Cal. App. 2d 777, 266 P. 2d 105 (1954), hearing den. 1954, cert. den. 348 U. S. 897 (1954); *Fellom v. Redevelopment Agency of City and County of San Francisco*, 156 Cal. App. 2d 811, 320 P. 2d 884 (1958), hearing den. 1958, app. dism. 358 U. S. 56 (1958).

Colorado:

Rabinoff v. District Court in and for the City and County of Denver, 145 Colo. 225, 360 P. 2d 114 (1961).

Connecticut:

Gohld Realty Co. v. City of Hartford, 141 Conn. 135, 104 A. 2d 365 (1954); *Graham v. Houlihan*, 157 Conn. 321, 160 A. 2d 745 (1960), cert. den. 364 U. S. 833 (1960).

Delaware:

Randolph v. Wilmington Housing Authority, 139 A. 2d 476 (1958).

Florida:

Grubstein v. Urban Renewal Agency of City of Tampa, 115 So. 2d 745 (1959).

Georgia:

Bailey v. Housing Authority of City of Bainbridge, 214 Ga. 790, 107 S. E. 2d 812 (1959). (After state constitutional amendment)

Illinois:

Zurn v. City of Chicago, 389 Ill. 114, 59 N. E. 2d 18 (1945); *Chicago Land Clearance Commission v. White*, 411, Ill. 310, 104 N. E. 2d 236 (1952).

Indiana:

Alanel Corporation v. Indianapolis Redevelopment Commission, 239 Ind. 35, 154 N. E. 2d 515 (1958).

Kansas:

State ex rel. Fatzer v. Urban Renewal Agency of Kansas City, 179 Kan. 435, 296 P. 2d 656 (1956).

Kentucky:

Miller v. City of Louisville, 321 S. W. 2d 237 (1959).

Maine:

Crommett v. City of Portland, 150 Me. 217, 107 A. 2d 841 (1954).

Maryland:

Herzinger v. Mayor & City Council of Baltimore, 203 Md. 49, 98 A. 2d 87 (1953). (Expressly authorized by state constitution)

Massachusetts:

Papadinis v. City of Somerville, 331 Mass. 627, 121 N. E. 2d 714 (1954); *Despatchers' Cafe, Inc. v. Somerville*

Housing Authority, 332 Mass. 259, 124 N. E. 2d 528 (1955); *Bowker v. City of Worcester*, 334 Mass. 422, 136 N. E. 2d 208 (1956); *Worcester Knitting Realty Co. v. Worcester Housing Authority*, 335 Mass. 19, 138 N. E. 2d 356 (1956).

Michigan:

In re Slum Clearance in City of Detroit, 331 Mich. 714, 50 N. W. 2d 340 (1951).

Minnesota:

Housing and Redevelopment Authority of City of St. Paul v. Greenman, 255 Minn. 396, 96 N. W. 2d 673 (1959); *Asch v. Housing and Redevelopment Authority of City of St. Paul*, 256 Minn. 146, 97 N. W. 2d 656 (1959); *Housing and Redevelopment Authority in and for the City of Minneapolis v. Minneapolis Metropolitan Company*, 259 Minn. 1, 104 N. W. 2d 864 (1960).

Missouri:

State ex inf. Dalton v. Land Clearance for Redevelopment Authority of Kansas City, 364 Mo. 974, 270 S. W. 2d 44 (1954); *Land Clearance for Redevelopment Authority of City of St. Louis v. City of St. Louis*, 270 S. W. 2d 58 (1954). (Under express provision of state constitution.)

New Hampshire:

Velishka v. City of Nashua, 99 N. H. 161, 106 A. 2d 571 (1954).

New Jersey:

Sorbino v. City of New Brunswick, 43 N. J. Super. 554, 129 A. 2d 473 (1957); *Wilson v. City of Long Branch*, 27 N. J. 360, 142 A. 2d 837 (1958), cert. den. 358 U. S. 873 (1958). (Both cases decided under express state constitutional provision.)

New York:

Murray v. LaGuardia, 291 N. Y. 320, 52 N. E. 2d 884 (1943), cert. den. 321 U. S. 771 (1944); *Kaskel v. Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659 (1953), reh. den. 306 N. Y. 609, 115 N. E. 2d 832 (1953), cert. den. 347 U. S. 934 (1954). (Both cases decided under constitutional provision on subject).

North Carolina:

Redevelopment Commission of Greensboro v. Security National Bank of Greensboro, 252 N. C. 595, 114 S. E. 2d 688 (1960).

Ohio:

State ex rel. Bruestle v. Rich, 159 Ohio St. 13, 110 N. E. 2d 778 (1953); *Teresa Grisanti v. City of Cleveland*, 18 Ohio Op. 2d 143, 179 N. E. 2d 798 (Cuyahoga County Common Pleas, 1961), aff'd 89 Ohio L. Abs. 1, 181 N. E. 2d 299 (Cuyahoga County Court of Appeals, 1962), app. dism. 173 Ohio St. 386, 182 N. E. 2d 568 (1962).

Oregon:

Foeller v. Housing Authority of Portland, 198 Ore. 205, 256 P. 2d 752 (1953).

Pennsylvania:

Belovsky v. Redevelopment Authority of City of Philadelphia, 357 Pa. 329, 54 A. 2d 277 (1947); *Schenck v. City of Pittsburgh*, 364 Pa. 31, 70 A. 2d 612 (1950).

Rhode Island:

Opinion to the Governor, 76 R. I. 249, 69 A. 2d 531 (1949); *Ajootian v. Redevelopment Agency of City of Providence*, 80 R. I. 73, 91 A. 2d 21 (1952) (Both cases decided before state constitutional amendment expressly permitting.)

Tennessee:

Nashville Housing Authority v. City of Nashville, 192 Tenn. 103, 237 S. W. 2d 946 (1951).

Texas:

Davis v. City of Lubbock, 160 Tex. 38, 326 S. W. 2d 699 (1959).

Virginia:

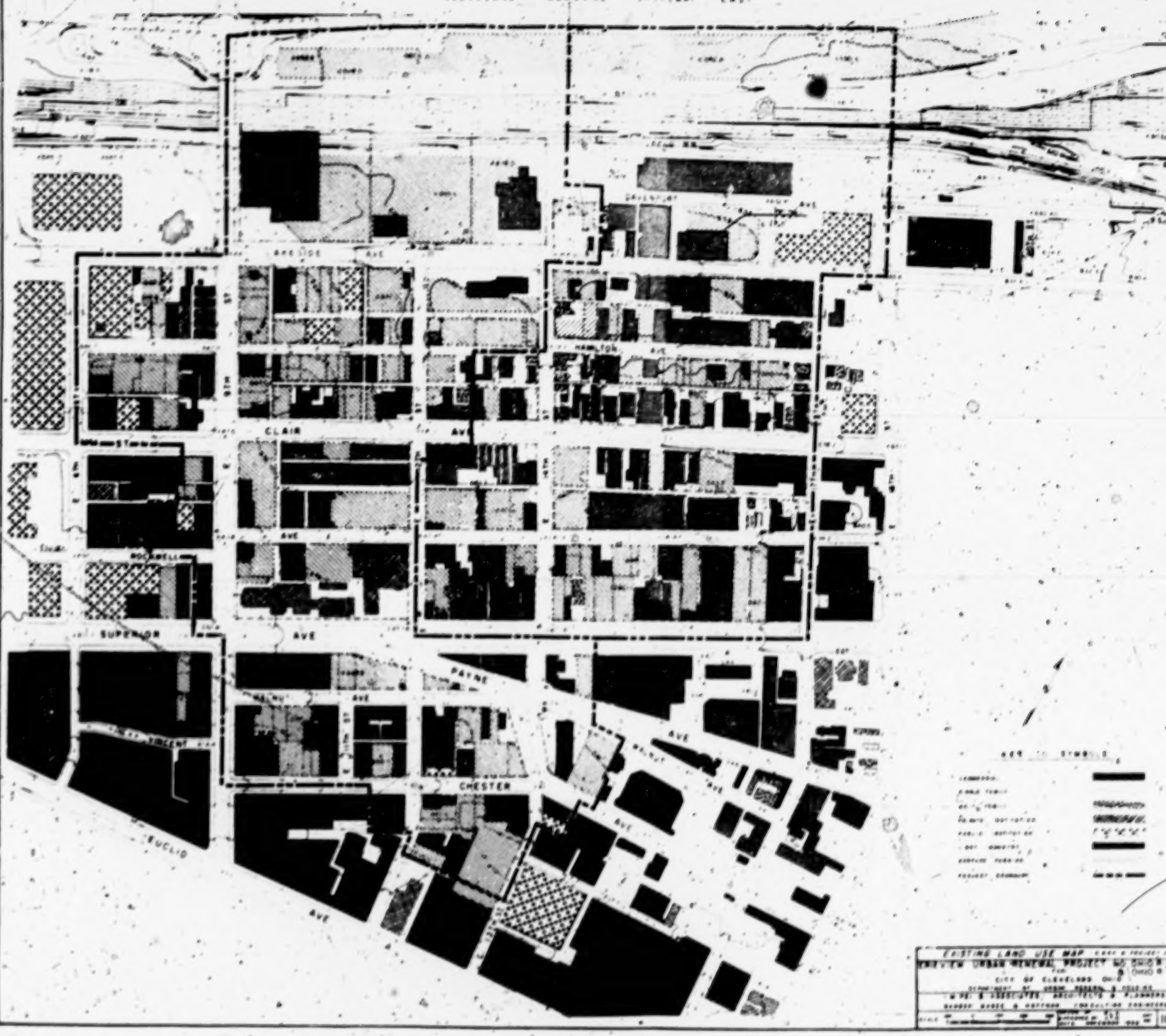
Hunter v. Norfolk Redevelopment & Housing Authority, 195 Va. 326, 78 S. E. 2d 893 (1953).

Wisconsin:

David Jeffrey Co. v. City of Milwaukee, 267 Wis. 559, 66 N. W. 2d 362 (1954).

APPENDIX C.

Existing Land Use Map—Erieview-I Urban Renewal Area.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